IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1387 of 2006 (S/S)

Ramesh Chandra Raturi
S/o Sri N.N. Raturi,
Senior Assistant in the officer
District Program Officer, Dehradun.
…… Petitioner

Versus

1. State of Uttaranchal
through Secretary
Women Welfare & Child Development,
Secretariat, Dehradun.
2. Smt. Hemlata Dhaundiyal,
Director,
Interrogative Child Development Scheme,
25, Shastri Nagar, Haridwar Road, Dehradun.

…….. Respondents

Mr. C.D. Bhauguna, learned counsel for the petitioner.
Mr. N.P. Sah and Mr. Harendra Belwal, learned Standing Counsel for the State.

Hon'ble Prafulla C. Pant, J.

Heard Mr. C.D. Bahuguna, learned counsel for the petitioner and Mr. N.P. Sah & Mr. Harendra Belwal, learned Sanding Counsel for the State.

2) By means of this petition, the petitioner has sought following reliefs:

"i) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 25/ 26-10-2006, so far as it relates to transfer of the petitioner from Dehradun to Ramgarh in District Nainital, passed by the respondent No. 2, contained in Annexure- 1 to the writ petition.

ii) Issue any other writ, order or direction, as this Hon'ble court may deem fit and proper, in the facts and circumstances of the case.

iii) Award cost of petition to the petitioner."

3) The impugned order, which has been challenged by the petitioner, is Annexure – 1 to the writ petition, and is being reproduced as under:

आदेश

वाद संख्या 1166)एस/एम= 2006, श्री रमेष चन्द्र रतूड़ी बनाम उत्तरांचल राज्य एवं अन्य में माननीय उच्च न्यायालय, नैनीताल, उत्तरांचल द्वारा पारित आदेष दिनांक 29 अगस्त 2006 के अनुपालन में श्री रामेष चन्द्र रतूड़ी, प्रवर सहायक का निलम्बन तत्काल प्रभाव से निरस्त किया जाता हैं श्री रतूड़ी को जनपद नैनीताल में बाल विकास परियोजना रामगढ़ नैनीताल में तैनात किया जाता है ं श्री रतूडी के विरूद्ध गतिमान अनुषासनात्मक कार्यवाही के अन्तिम आदेष पृथक से पारित किये जायेगें ं

Sd/-

)हेमला ढौंडियाल=
निदेशक

4) Learned counsel for the petitioner has referred various case laws, guidelines and Government Orders,

relating to transfer of employees, He has argued on its basis that the impugned order of transfers malafide and against the orders applicable to transfer:

5) Having gone through the petition and having heard learned counsel for the petitioner, it is evident and clear that the petitioner was facing departmental enquiry and was placed under suspension. It appears that he earlier filed a writ petition No. 1166 (S/S) of 2006, in which directions were issued on 29.08.2006, by this Court, to pass final orders, on the enquiry pending against the petitioner, within three weeks, failing which the suspension orders of the petitioner shall stand revoked. It is admitted that the departmental enquiry is yet to be concluded. Consequently, the impugned order dated 25 / 26th October, 2006, appears to have been passed reinstating the petitioner, on revocation of his suspension order, he has been given posting in Child Development Project, Ramgarh, Nainital.

6) The contention and submission of learned counsel for the petitioner, treating said impugned order dated 25 / 26th October 2006, as transfer order, is misconceived. The order of reinstatement is different than the order of transfer from one post to another post. When an employee is placed under suspension, in fact, he is not holding post or charge of any post. In his place, there must have been some employee, who is holding the post from which the employee is placed under suspension. In the circumstances, department has to give him posting on

his reinstatement, which carries the scale, for which he is entitled. In the circumstances the impugned order cannot be treated to be a transfer, from one place to another place.

7) For the reasons as discussed above, this writ petition is liable to be dismissed, as the guidelines applicable to the transfer are not applicable to the reinstatement order, on revocation of the suspension order. Therefore, the writ petition is dismissed, in limine. (Interim relief application No. 13725 of 2006 also stands disposed of).

(Prafulla C. Pant, J.)

Dt; November 13, 2006
H.Negi